prior bankruptcy (*Ex parte Watson, in Re Roberts*[1]); *Morgan v. Knight*[2]. The Court, however, has a discretion in such a case, and may refuse to make a further receiving order where satisfied that there is no asset available for administration under the subsequent bankruptcy (*Re Betts, Ex parte Betts*[3]).

In the United Kingdom, provision dealing with second and subsequent bankruptcies was first introduced by section 11 of the Bankruptcy and Deeds of Arrangement Act, 1913; this provision was incorporated in section 39 of the Bankruptcy Act, 1914, which was later replaced by section 3 of the Bankruptcy Act, 1926. This section substantially alters what had been the law prior to the Act of 1914; it provides that, in the event of a second or subsequent bankruptcy any property acquired by a bankrupt since the first adjudication, which at the date of the presentation of the subsequent petition has not been distributed among the creditors in the first bankruptcy, is (subject to any dispossession made by the official receiver or trustee, without the knowledge of the presentation of the subsequent petition, and subject to the provisions of section 47) to vest in the trustee in the second bankrupcy, but any unsatisfied balance of the debts provable in the first bankruptcy may be proved in the subsequent bankruptcy by the trustee.

The Bankruptcy Enactment of Johore (En. No. 74) was not specifically repealed but was superseded by the Bankruptcy Enactment of the F.M.S. by virtue of the Bankruptcy (Transitional Provisions) Ordinance, 1946 (M.U. No. 17 of 1946).

The Bankruptcy Enactment (F.M.S. Cap. 55) is modelled on the Bankruptcy Act, 1883, of the United Kingdom and, in default of a statutory provision in the local law of bankruptcy similar to section 39 of the United Kingdom Act, it is necessary, when looking for assistance to English authorities, to refer to cases decided under the Act of 1883.

Now under section 42 of the Bankruptcy Enactment (corresponding to section 44 of the United Kingdom Act of 1883) the property of the bankrupt divisible amongst his creditors comprises all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge. In *Ex parte Beardmore, re Clark*[4] following *Ex parte Ford*[5] it was held that after-acquired property must be treated as assets in the first bankruptcy; it often happens that the trustee in the first bankruptcy has a claim to all the assets there might be and there is no psssibility of there being anything for the new creditors, and it is in such a case that a second petition for an adjudication order would be dismissed [*Ex parte Betts, re Betts*[3] (*vide supra*)].

The position is the same in England as it was before 1914 in the case of the second bankruptcy being a foreign bankruptcy; in *In re Temple*[6] it was held that section 39 of the Bankruptcy Act, 1914, is confined to bankruptcies in the United Kingdom and that in the absence of any enactment vesting after-acquired property in the trustee of a subseqent foreign bankruptcy the property belonged to the English trustee and was divisible among the creditors in the English bankruptcy.

Under the Bankruptcy Enactment the two bankruptcies in the present case must be administered separately; the only property available for distribution is the amount of $5 per mensem which is being paid by the bankrupt on the order made in 1937 under section 50 of the Bankruptcy Enactment; this property must be treated as assets in the first bankruptcy, and no property acquired by the bankrupt can go to the benefit of the creditors in the second bankruptcy until the creditors in the first bankruptcy have been paid in full or until the bankrupt has obtained a discharge in the first bankruptcy.

The order of the 17th January, 1937, was made when the bankrupt's income was $70 per mensem; he is now employed as a Clerk in the Education Department, Muar, on a basic salary of $300 per mensem and his total monthly income including allowances is $470. He should therefore be in a position to pay a larger sum for the benefit of his creditors.

I accordingly direct as follows:—

(a) That the two bankruptcies be administered separately;

(b) That the Official Assignee apply to the Court for a variation of the order made on the 17th January, 1937, with the object of increasing the amount paid monthly by the bankrupt; and

(c) That the amounts so paid be assets in the first bankruptcy.

Order accordingly.

M. V. SAMY v. M. NAGAPPA PATHER.

[A. C. J. (Thomson, J.) January 19, 1954]

[Ipoh — Civil Appeal No. 14 of 1953]

Procedure — Subordinate Courts Rules, 1950, O. 3 r. 2. — Interpretation of — Original document in language other than English — Admissibility in evidence of such document — "Proceeding or document" — Meaning of.

The defendant (appellant) had tendered an account book mainly kept in the Tamil language written in Tamil characters but with the dates and amounts of money in

Roman characters. Counsel for the plaintiff (respondent) objected to the admission of this book in evidence on the ground that it was not accompanied by a certified translation (as provided under O. 3 r. 2) and the Magistrate upheld the objection and refused to admit it.

Held: the Magistrate was wrong in rejecting this book which was tendered.

MAGISTRATE'S CIVIL APPEAL.

E. Sharma for the appellant (defendant).

S. K. Das for the respondent (plaintiff).

The facts and arguments appear sufficiently from the judgment.

Thomson, J. (delivering oral judgment) : —This is an appeal against the judgment of the Magistrate at Sitiawan.

The plaintiff's claim was for balance of principal and interest said to be due on a promissory note, the execution of which by the defendant was admitted. The defence, in effect, was, in the first place, that credit had not been given for certain payments alleged to have been made by the defendant, and, in the second place, that the interest charged was excessive.

With regard to the second of these points, the Magistrate invoked the assistance of the Usurious Loan Enactment (which in view of the date of the note was the relevant statute) in favour of the defendant. I see no reason to quarrel with his having done so or with the extent to which he did so.

As regards the first point, the Magistrate decided the question of fact involved in favour of the plaintiff. That question of fact related to thirteen alleged payments of $30 each, and the Magistrate held he was not satisfied that these payments had been made. Against that finding the defendant has now appealed.

I do not propose to deal with a number of the grounds of appeal beyond saying that in my opinion they are without substance.

Having said that, however, there remains one ground which I feel I should deal with at some small length because it raises a question of some general importance as to the interpretation of the Subordinate Courts Rules which may well arise to trouble other Magistrates in future.

The point is this. The defendant alleged he had made thirteen payments each of $30. After he had given evidence to that effect and been cross-examined upon it, the Magistrate would appear to have asked him whether he kept books of account. In answer to this, he tendered a book which on the face of it appears to be some sort of an account book mainly kept in the Tamil language, written in Tamil characters, but with the dates and amounts of money in Roman characters. Counsel for the plaintiff objected to the admission of this book in evidence on the ground that it was not accompanied by a certified translation and the Magistrate upheld that objection and refused to admit it.

I am not concerned here with the question of whether or not the book was admissible or otherwise by reason of section 34 of the Evidence Ordinance because it is clear from the grounds of judgment that the Magistrate's reason for rejecting it had nothing to do with section 34 of the Evidence Ordinance, but was based solely on Rule 2 of Order III of the Subordinate Courts Rules which he apparently interpreted as meaning that such a document written in a language other than English could not be used in evidence unless accompanied by a certified translation into the English language.

In my opinion the Magistrate was wrong.

The material portion of Rule 2 of Order III reads as follows :—

"Every such proceeding or document shall, if not in the English language, be accompanied by a certified translation thereof, and shall not otherwise be received, filed or used in Court."

That provision standing in isolation is meaningless, and it can only be given meaning by an amplification of the word "such" used in qualification of the expression "proceeding or document". That amplification is clearly to be had from a consideration of the terms of the preceding rule which refers, and here I quote to "every proceeding and every document used in any proceeding, other than original documents produced in evidence".

The word "proceeding" has received different construction in the past. I do not think it necessary to consider all of these at length. It has been construed as meaning an action as a whole. It has also been construed as meaning a step in an action. Here, however, it seems to me that the word is used in a somewhat peculiar sense. The Order as a whole is headed "Form of Proceedings". The side-note to Rule 1 is "Size and format" and the side-note to Rule 2 is "Language". Rule 1 says (and here I omit a number of words which are not relevant to the point) "every proceeding and every document used in any proceeding .....shall be written, typewritten or printed .....on paper of good quality". Rule 3(1) says "every such proceeding or document shall bear the heading and title in Form 1". Taking all these things together it seems to me that the word "proceeding" is used here not in the sense of a step in a suit or action, but as being synonymous with the actual document which is the outward and physical sign of a step in an action being taken. It includes, although of course it

may well include other things, the Summons which is the actual physical piece of paper which is the outward sign of the commencement of a suit or action. From that it would seem to follow that the word "document" used in Rule 1 and in Rule 2 is a piece of paper which is used in connection with and is part of a piece of paper which is a "proceeding".' That is the conclusion to which I am driven to my view of the strict rules of construction, and I am fortified in it by the consideration that any other construction would be in conflict with the provisions of the later enacted Evidence Ordinance which in no case makes a certified translation a condition precedent to the admissibility of a document in evidence.

It is for this reason I am to say that the Magistrate was wrong in rejecting this book which was tendered. There were two courses open to him unless he rejected it on other grounds. One was to consider it forthwith with the aid of the Court interpreter; the other was to adjourn the proceedings to enable a formal translation to be prepared and, of course, such adjournment would have been at the expense of the party who had tendered it without a translation. He took neither of these courses and I have now to consider what is to be done in the circumstances.

This appeal is by way of re-hearing and in regard to it this Court has like powers and jurisdiction as the Court of Appeal has in the hearing of appeals from the High Court (Section 51, Courts Ordinance). By section 40 of the Courts Ordinance a new trial shall not be granted on the ground of improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice has been thereby occasioned. Here, I have held there has been an improper rejection of evidence.

That evidence, however, is documentary. I have seen it, and I am in as good a position as would be any Magistrate to form some opinion as to its worth. Having examined it, I am satisfied that had the Magistrate considered it, it could have had one effect and one effect only on his mind and that effect would have been to fortify him in disbelieving the evidence of the defendant.

The book is not in any sense of the word an ordinary commercial book of account. It consists of 9 or 10 pages, all of them except the page dealing with this transaction, of a rather scrappy nature, and none of them except the page dealing with this transaction containing any entry prior to 1952. The page relating to this transaction contains 16 entries bearing a series of dates, commencing on 1st September, 1951, and ending on 13th January, 1953, that is, extending over a period of 18 months, and the whole series having obviously been written at one and the same time.

To be fair to the appellant I must not forget that he himself made no attempt to produce this book until the Magistrate himself raised the question of its existence. To my mind, it has every appearance of a memorandum made up at one time at a fairly recent date to cover a series of transaction which, as I have said, are alleged to have extended over 18 :nonths. It may well be, and I am always prepared to prefer an innocent explanation to a guilty one, that it was composed as nothing more than a sort of *aide memoire*. Regarded as a book of account, however, it is valueless.

The appeal is dismissed with costs.

Appeal dismised.

Solicitor for the appellant: *S. M. Sharma.*

Solicitors for the respondent: *Das & Co.*

In re JASPER BERTRAM YOUNG, DECEASED.

[O. C. J. (Wilson, J.) January 22, 1954]

[K.L. — Originating Summons No. 137 of 1952]

Estate Duty Enactment, s. 43(4) — Private Limited Company — Valuation of shares on death of shareholder — Articles of Association — Director's remuneration under.

In this matter, two points arose for consideration with regard to estate duty payable on the estate of the deceased in the Federation of Malaya, namely:—

(1) the value of 2,500 ordinary shares in the Company at the date of the death of the deceased;

(2) the additional director's remuneration to which the deceased's estate is entitled.

Held: (1) where it is not impossible to arrive at a Valuation of the Ordinary Shares of a Company on a basis which is not calculated on the value of its tangible assets, the basis of valuation laid down in the case of the **Attorney-General of Ceylon v. Mackie**(1) does not apply; (2) it cannot be inferred that Article 81 of the Articles of Association formed part of the contract between the Company and the directors, and that a director could not sue the Company successfully for additional remuneration based on Article 81.

Cases referred to:—

(1) *Attorney-General of Ceylon v. Mackie & Anor.* (1952) 2 All E.R. 775.

(2) *Commissioners of Inland Revenue v. Ethel Maclean Crossman & Ors.* (1937) A.C. 26; (1936) 1 All E.R. 762.

(3) *J. S. Anderson v. Commissioner of Estate Duties* (1939) M.L.J. 139.

(4) *In re Holt* (1953, November 26) The Times 11; (1953) 1 W.L.R. 1488.